



ADVOCATES FOR HIGHWAY AND AUTO SAFETY

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Docket No. FHWA-2001-10370
U.S. DOT Dockets
U.S Department of Transportation
400 Seventh Street, SW
Washington, DC 20590

Commercial Vehicle Width Exclusive Devices: Notice of Proposed Rulemaking, 67 FR 48994 *et seq.*, July 29, 2002

Advocates for Highway and Auto Safety (Advocates) submits the following comments in response to the captioned notice of proposed rulemaking in which the Federal Highway Administration (FHWA) proposes two changes to its regulations governing the widths of commercial motor vehicles. The agency proposes that the distance that width exclusive devices may project from the sides of commercial motor vehicles be extended from three to four inches. The second proposal by the FHWA would rescind regulation of recreational vehicles (RVs) as commercial motor vehicles when manufacturers drive RVs to sales locations and dealers drive RVs to customers “if add-on customer devices extend beyond the regular width exclusion zones.” 67 FR 48994. Advocates opposes both changes.

There is no foundation in the rulemaking record established by the FHWA on the basis of safety considerations to extend the overall widths of commercial motor vehicles or to permit the movement of RVs exceeding the maximum permissible width of commercial motor vehicles (currently set at 102 inches). The regulation of commercial motor vehicle maximum width was entrusted to the FHWA in 1982 when Congress legislatively expanded the width of commercial motor vehicles from 96 inches to 102 inches for interstate commerce. Congressional intent at that time was clear that the maximum width of commercial motor vehicles was expanded in relation to the consideration of the safe movement of these wider vehicles on public roads and streets. Section 416(b) of the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424, 96 Stat. 2097) gave the Secretary of Transportation the authority to exclude for the measurement of vehicle width any safety and energy conservation devices found necessary “for the safe and efficient operation of commercial motor vehicles.” *Id.* at 48994; 49 U.S.C. § 31113(b).

The agency has an affirmative obligation to make an explicit safety finding about increases in the widths of commercial motor vehicles that exceed the figures established in prior regulatory policy for additional safety and energy conservation devices that extend beyond 102 inches. However, the FHWA has made no safety finding of any kind in this rulemaking about the consequences of further widening of commercial motor vehicles by permitting additional extension to either side of safety and energy conservation devices and, in the case of RVs, of rescinding the federal role in ensuring the safe transportation of RVs for delivery when they exceed 102 inches in width because of the presence of such devices. In the first instance dealing with the issue of general width exclusive devices on commercial motor vehicles, the agency simply invokes a need to harmonize the widths of commercial motor vehicles in order to advance the purposes of the North American Free Trade Agreement (NAFTA). 67 FR 48994-48995. In the second, the FHWA cites comments to a previous docket on length and width exclusive devices, including comments received in the docket from the U.S. House of Representatives Committee on Transportation and Infrastructure. In addition, with regard to RVs, the FHWA cites the Senate report that accompanied the fiscal year 2002 Appropriations Act for the U.S. Department of Transportation “encouraging the FHWA to amend its regulation to include an allowance, with reasonable safety limitations, for the commercial transport of these RVs with apertures [sic].” S. Rept. No. 107-38, at 66.

It is crystal clear that Congress expects the agency to make an explicit safety finding whenever it exercises its discretion to permit or modify the size of safety or energy conservation devices that exceed the statutory maximum width of 102 inches for commercial vehicles. In the case of RVs, Congress has not mandated that RVs be exempted, but has only recommended agency evaluation of such an exemption. Moreover, the traditional Congressional interest in the safety consequences of such an exemption are unmistakably asserted by Congress in the cited Senate Report, viz., that the FHWA “include an allowance, *with reasonable safety limitations*” for commercial transport of RVs that exceed 102 inches in width. *Id.* (Emphasis supplied.) In fact, the report language does not contemplate simply a lifting of the current restrictions on RV deliveries in favor of no federal role. Rather, it unmistakably directs the agency to allow such transport only *with reasonable safety limitations*. In contrast, the FHWA has decided to propose wholesale elimination of all federal participation in guaranteeing safe RV deliveries without maintaining reasonable safety limitations, a result not intended by Congress and not consigned to agency discretion.

In each case the agency has disregarded both its longstanding mandate from Congress to explicitly evaluate the safety consequences of any changes in commercial vehicle width resulting from the use of width exclusive devices, as well as recent Congressional instruction that it evaluate the consequences of alternative ways to provide additional allowance for the transport of RVs with extensions such as “roll up awnings” that extend up to six inches from the side of RVs when moved to dealers or customers. 67 FR 48995. Instead of making such safety findings, the FHWA in the first case has simply asserted that NAFTA considerations are sufficient to permit further extension of width exclusive devices and, in the second case, has decided, without a directed safety finding as clearly enunciated in the Senate report, simply to void the federal role in requiring that states issue overwidth permits for the movement of oversized RVs.

In both cases, therefore, the agency has ignored its explicit stewardship role over interstate commercial vehicle safety and has proposed that wider commercial vehicles be operated and transported without a single sentence of consideration about the safety consequences. The FHWA should be aware that commercial motor vehicles often travel on narrow, two-way, two-lane roads, sometimes with lanes width of 10 feet or even less, and at high speeds. Although the addition of an inch of width for exclusive devices on each side of a commercial vehicle may appear to be a *de minimis* change, it in fact can have safety consequences for commercial motor vehicles, especially those with long trailers, offtracking on short radius curves on these substandard roads.

Similarly, the removal of the federal role in guaranteeing state issuance of an overwidth permit for transport of RVs exceeding 102 inches in width means that the issuance of such permits is consigned solely to state discretion even for interstate movement. The agency has no knowledge of the extent to which any of the states would continue to require oversize permits. If it has such knowledge, no documentation of prospective state practices in this regard are to be found in the administrative record of this rulemaking. Again, the FHWA is surely aware of the fact that dealer and customer locations often involve movement of RVs on minor collector and local roads, and on residential streets. Without a regulatory mandate to the states to evaluate the safety of such transport and to require a permit for overwidth RVs to operate on roads and streets, there is no assurance of public safety. The FHWA is prepared simply to retire from the scene and to leave the safety consequences of the commercial movement of RVs to unknown state action or its lack thereof. Advocates believes that this posture by the agency of making regulatory decisions about the widths of commercial vehicles without even a hint of consideration for the consequences for public safety is an abuse of its discretion.

The FHWA is mistaken if it believes that it has unfettered discretion simply to change its regulations on the safety of width exclusive devices by fiat without any evaluation of the safety consequences with an accompanying rationale for any changes based on that safety evaluation. If the FHWA believes that both proposed changes in the instant notice have legitimate safety rationales, the agency must state what those are for the record and ventilate them for public comment in the Federal Register.

Respectfully submitted,

ORIGINAL SIGNED

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